

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 04-0260**  
**Withholding Tax**  
**Responsible Officer**  
**For the Tax Period 1995-1996**

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**ISSUE**

**1. Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-3-4-8(f), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan 654 N.E. 2<sup>nd</sup> 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

**STATEMENT OF FACTS**

The taxpayer was associated with a corporation that did not properly remit withholding taxes to the state during the tax period 1995-1996. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax, interest, and penalty. A hearing was held and this Letter of Findings results.

**1. Withholding Tax - Responsible Officer Liability**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2<sup>nd</sup> 279 (Ind.1995), any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit withholding taxes to the state. The taxpayer submitted substantial documentation indicating

that he did not have a duty to remit the withholding taxes to the state. Therefore, he is not personally liable for said taxes.

**Finding**

The taxpayer's protest is sustained.

KMA/JMM/MR--042411